

Supreme Court, U.S.
FILED

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No.

OFFICE OF THE CLERK

Supreme Court of the United States

MARCUS ROBINSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Marcus Robinson

Petitioner

05992-02

P.O. Box 12014

Terre Haute, IN 47801

QUESTIONS PRESENTED

Petitioner was sentenced under mandatory guidelines prior to this Court's *Booker* decision and his statutory maximum sentence was enhanced based on facts not charged in indictment, not submitted to a jury, and not proven beyond a reasonable doubt, or admitted by petitioner. At sentencing he raised a Sixth Amendment challenge but in briefing on direct appeal, still prior to this Court's *Booker* decision, he did not raise a Sixth Amendment challenge to his sentence in the Court of Appeals. He did, however, raise the challenge in a petition for Writ of Certiorari with this Court and his case was subsequently remanded by this Court for further consideration in light of *Booker* where his case was subsequently dismissed, without even plain error review, on the grounds that his failure to raise a *Booker* claim earlier "waived" the claim.

1.) Does the failure to raise the Sixth Amendment challenge in his initial direct appeal brief "waive" the claim, precluding even plain error review or relief as held by the court below and the Court of Appeals for the Eleventh Circuit, in conflict with the decisions of every one of the other courts of appeals to have considered the question?

2.) Should the District Court be granted the initial opportunity to review and correct petitioner's 'pipeline case' Sixth Amendment violations under *Booker* before affirmation of the sentence by the Court of Appeals, as the Second, Third, and Ninth Circuits have held, in conflict with the decision below and the decisions of the other courts of appeals?

PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW

The parties to the proceedings in the United States Court of Appeals for the Sixth Circuit were as follows: UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MARCUS A. ROBINSON, DENNIS K. MILES, CHAD J. ROBINSON, FRANCIS D. HAYDEN, Defendants-Appellants.

No party is a company, corporation, or subsidiary of any company or corporation.

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PETITION FOR A WRIT OF CERTIORARI

Marcus Robinson, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on 12-20-05.

OPINIONS BELOW

The 12-20-05 opinion of the Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, is an unpublished decision, and is reprinted in the separate Appendix A to this Petition.

The prior opinion and judgment (Judgment & Commitment Order) of the United States District Court for the Eastern District Of Michigan, entered on 9-26-01, is an unpublished decision, and is reprinted in the separate Appendix B to this Petition.

The prior opinion and judgment of the United States Court of Appeals for the Sixth Circuit in the direct appeal in this case, entered on 11-19-04, is an unpublished decision reported at 116 Fed. Appx. 646; 2004 U.S. App. LEXIS 24320, and is reprinted in the separate Appendix C to this Petition.

The prior opinion and judgment of the Supreme Court of the United States, granting certiorari, vacating and remanding to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *United States v. Booker* is reported at 543 U.S. _____, 160 L. Ed. 2d 621, 125 S. Ct. 738 (2005) and is reprinted in the separate Appendix D to this Petition.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on 12-20-05. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS, TREATIES,
STATUTES, RULES AND REGULATIONS INVOLVED**

The Fifth Amendment to the Constitution of the United States provides in relevant part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ... *Id.*

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. *Id.*

18 U.S.C. § 3553(a) provides:

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in